Date: 10/11/2012

From: Director, Procurement Policy and Warrant Management Service (003A2A)

Subj: Class Deviation –VA Acquisition Regulation 816.504, Indefinite-quantity contracts (VAIQ # 7287642)

To: Associate Deputy Assistant Secretary for Procurement Policy, Systems, and Oversight (003A2) and Deputy Senior Procurement Executive

1. **Purpose:** To request your approval, in accordance with Federal Acquisition Regulation (FAR) subpart 1.404, Class Deviations, and Department of Veterans Affairs Acquisition Regulation (VAAR) subpart 801.404, Class Deviations, to issue a Class Deviation from VAAR 816.504, Indefinite-quantity contracts.

2. **VA Acquisition Regulation (VAAR) Sections Impacted:** VAAR subparts 816.504 and 852.216-70

3. **Effective Date:** Immediately.

4. **Expiration Date:** Until rescission.

5. **Background:**

   a. **Current VAAR Policy:**

   VAAR 816.504, Indefinite-quantity contracts, provides for the insertion of the clause (or its alternatives) at 852.216-70, Estimated quantities, in contracts where the contracting officer cannot determine quantities to be acquired under a solicitation and intends to issue a solicitation for estimated quantities, i.e., indefinite-quantity contracts.

   VAAR 852.216-70, Estimated quantities, provides the contract clause and alternatives prescribed in VAAR 816.504.

   b. **Need for Deviation from VAAR 816.504:** FAR 1.302(b) states, “acquisition regulations shall be limited to . . . contract clauses that supplement the FAR to satisfy the specific needs of the agency.” A deviation is required to comply with the FAR requirement that the contract clauses prescribed in VAAR 816.504 supplement the FAR to satisfy the specific needs of the VA.

   Particularly, 852.216-70, Estimated quantities, which is prescribed in VAAR 816.504, provides that “the Department of Veterans Affairs shall not be relieved of its obligation to order from the contractor **all** (emphasis added) articles or services that may, in the judgment of the ordering officer, be
needed except that in the public exigency procurement may be made without
regard to this contract.”

This language conflicts with the basic tenet of an indefinite-quantity contract
because the VA has no obligation to order from the contractor all articles and
services that may be needed. VA is only required to “order and the contractor
to furnish at least a stated minimum quantity of supplies or services,” in an
indefinite-quantity contract. See FAR 16.504(a)(1).

c. **New Policy:** Use of VAAR clause 852.216-70, Estimated quantities, including
all alternate versions, is suspended.

6. **Attachment:**

- VA Class Deviation from VA Acquisition Regulation 816.504, Indefinite-quantity
contracts

7. **Additional Information:** Questions or comments regarding this class deviation may
be directed to Ms. Eyvonne Mallett, Senior Procurement Analyst, at (202) 461-5101.

____________________
/s/Marilyn Harris

Attachment

Approved/Disapproved

____________________  10/22/2012
/s/C. Ford Heard III  Date
ADAS for Procurement, Policy,
Systems and Oversight
Attachment

Class Deviation
Department of Veterans Affairs Acquisition Regulation 816.504, Indefinite-quantity contracts

816.504 Indefinite-quantity contracts.

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END